

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 MONTANA COMMON CAUSE

7 FINDINGS OF FACT, CONCLUSIONS OF LAW,
8 ORDER, AND MEMORANDUM OPINION

9 These informal contested case proceedings were filed before the Commissioner
10 of Political Practices (Commissioner) to consider the appeal of the principal
11 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal
12 appealed the Commissioner's assessment of a civil penalty resulting from its late
13 filing of a lobbying disclosure report. The principal filed a written Waiver of
14 Hearing waiving its right to an in-person hearing, and submitted a written statement
15 for the Commissioner's consideration.

16 Based on the written submissions of the principal, the documents of record in the
17 Commissioner's file, and the applicable law, the Commissioner makes the following
18 findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

- 20 1. Montana Common Cause is a principal registered with the Commissioner.
- 21 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
22 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
23 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed
24 against any person who fails to file lobbying disclosure reports within the time
25 required by law.
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- 27

1 3. The post-Session 2007 lobbying disclosure report for Montana Common Cause
2 was required to be filed no later than May 29, 2007.

3 4. On May 16, 2007 the office of the Commissioner sent an email to all
4 principals, including Montana Common Cause. The email advised principals that a
5 post-Session 2007 lobbying financial disclosure report was required to be filed by
6 May 29, 2007. The email referenced the appropriate form that was required to be
7 filed, known as a form L-5A, and noted that it was available for download on the
8 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email
9 stated: "A report must be filed in this office even though neither lobbying nor
10 incurring of lobbying expenses may have occurred."

11 5. Montana Common Cause failed to file its L-5A on or before May 29, 2007.

12 6. On May 30, 2007, the Commissioner sent a letter to Jonathan Motl stating
13 that the post-Session L-5A report was due May 29, 2007, but had not been received.
14 The letter stated that a civil penalty started being assessed on May 30, 2007, at \$50
15 per day, and would continue until the report was filed or until the penalty amount
16 reached \$2,500. The letter urged the principal to fax the delinquent report
17 immediately, followed by a hard copy.

18 7. On June 13, 2007, the principal filed its report. Because the report was filed
19 twelve business days late, a \$600 civil penalty was assessed.

20 8. Montana Common Cause requested a hearing to contest the civil penalty. The
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on August
22 9, 2007. Montana Common Cause filed a written Waiver of Hearing and submitted
23 a written statement for the Commissioner's consideration.

24 9. In the written statement, C.B. Pearson, a board member and treasurer, asked
25 on behalf of Montana Common Cause that the penalty be waived because board
26 members were confused regarding when reports were due.

27

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during a reporting period, the report shall state that fact. § 5-7-208(4), MCA.

MEMORANDUM OPINION

Information offered by Montana Common Cause board member and treasurer C.B. Pearson states that late filing of the report was due to confusion, and corrective measures have been put in place. Notwithstanding any effort to ensure future compliance, a claim of confusion, standing alone, generally has no bearing on the requirement for timely filing of a lobbying report, and is not a sufficient basis for reducing or waiving a civil penalty. I urge principals to carefully review and understand the statutory filing requirements to ensure that they comply with the law and to avoid the assessment of civil penalties in the future.

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3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that Montana Common Cause shall
5 pay a civil penalty of \$600 to this office no later than November 28, 2007.

6 DATED this 19th day of October, 2007.

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10 Dennis Unsworth
11 Commissioner of Political Practices

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13 **NOTICE:** This is a final decision in a contested case. You have the right to seek
14 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
15 4-701 through 2-4-711.

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17 **CERTIFICATE OF SERVICE**

18 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
19 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

20 Jonathan Motl
21 Montana Common Cause
22 PO Box 1604
23 Helena MT 59624

24 DATED: October 19th, 2007

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27 Mary Baker
Program Supervisor